

New Shoreham Town Council Minutes
Town Hall, Old Town Road, Block Island
Wednesday, May 16, 2012
7:00 p.m.

Present: First Warden Kimberley H. Gaffett, Town Councilors Peter B. Baute, Kenneth C. Lacoste and Richard P. Martin. Second Warden Raymond J. Torrey was absent. Also present were Town Manager Nancy O. Dodge and Town Solicitor Katherine Merolla. Town Clerk Fiona Fitzpatrick, who took the minutes of the meeting.

First Warden Kimberley H. Gaffett called the meeting to order at 7:00 p.m.

Warden's Report

First Warden Gaffett read a letter from Shellfish Commission member Ardys Fillipone thanking Mike Ernst for helping with the annual shellfish transplant. Ms. Gaffett extended thanks to the Shellfish Commission and Mr. Ernst for the work done to transplant shellfish stock.

Public Input

John Willis spoke about snow fencing installed at Old Harbor by Ballard's Inn which effectively excludes the public from the beach beyond the establishment. He said there is no CRMC permit for the fence. He believes the fence contributes to sand intrusion into Old Harbor. He asked the Council to investigate ownership of the accreted land in the area currently claimed by Ballard's Inn.

Chris Blane reported a pothole by the Southeast Light. He says West Side Road from Ocean Avenue to Center Road looks good but parking on the side of the road will force pedestrians into the street this summer. He reported a liveaboard boat is back in the Great Salt Pond before the pumpout boat is operating. He reported a truck and motorcycle are parked at the mosquito beach parking lot where he thinks there should be no overnight parking.

Resolution honoring Librarian Lonnie Todd

Librarian Lonnie Todd, the Library staff, and Trustee Connie LaRue were present. First Warden Gaffett read the resolution, which is attached to these minutes. The Council and audience joined in a warm round of applause for Ms. Todd, who is greatly appreciated. The Library Board of Trustees, staff and friends will hold an open house on May 18 to honor and recognize Ms. Todd.

1. Receive update from TNS Police Chief Carlone re: summer public safety

Chief Carlone was present and reported on plans for summer public safety. He reiterated the July 4 plans he discussed at previous meetings. In past years the police tried to keep the unruly crowd together on the beach, this year they will try to prevent trouble and scatter the crowd. There will be a mainland police presence at the ferry on July 4 and they will arrest minors carrying alcohol. Digital signs, print and radio ads will inform visitors that drinking on the beach on Block Island is illegal. State police will work with the Block Island force on the Island. The police will limit beach access to a few points and confiscate alcohol from people going onto the beach. The Chief is not completely in favor of portajohns near the beach because they may attract people to the area. The Chief is considering using civilian volunteers for minor duties such as transporting confiscated alcohol, if the Town's insurance company approves.

Throughout the summer, the police will monitor social media for signs that large crowds are organizing themselves to travel to the Island. The police will send messages to those people letting them know that people will be arrested for drinking on the beach. The state police will have a full complement on the Island every weekend this summer.

Last year the Rescue Squad responded to 28 rescue calls from the beach. The Rescue Squad is making arrangements to bring a DMAT (Disaster Medical Assistance Team) to the Island, and considering leasing an extra ambulance with EMT's.

2. Act on 2012 Game License applications

Mr. Lacoste asked whether an establishment could renew a game license if the license was not used. The Clerk said it had been her practice to follow up only with licensees who had too many games, but she would review the game license procedures with an aim of determining whether a license may be held and renewed "in name only." Games are counted each year. This summer's inspection report will be given to the Town Council when licenses are renewed next year.

Dr. Baute moved, seconded by Mr. Martin, to renew game licenses from June 1, 2012 to May 31, 2013 for the following establishments pending verification that the number of games does not exceed the number permitted:

Aldo's Game Room	(1) (video game)
Ballard's Inn	(6) (video games)
Captain Nicks	(4) (pool tables, foosball)
Champlin's Resort	(20) (video games, pool table)
Club Soda	(4) (pool table, foosball)
Empire Theatre, Inc.	(20) (pinball, video, pool table, rides, etc.)
McGovern's Yellow Kitten's	(4) (pool table, video games)
National Hotel	(6) (video games)
Neptune House	(3) (pool table, video games)

Ayes: 4 (Gaffett, Baute, Lacoste, Martin) Nays: 0 Absent: 1 (Torrey)

3. Act on request of Blues on the Block re: location, dates and Town sponsored event

George Dodge submitted a letter requesting Town sponsorship and permission to stage the "Blues on the Block" concert series at Town beach again this year on Wednesdays in July and August. The concerts will be July 11, July 25, and August 8, 2012. August 15 will be included if a patron can be found.

Dr. Baute moved to grant Town sponsorship to the event and to grant permission for the blues concerts at the Town Beach in July and August, seconded by Mr. Lacoste.

Ayes: 4 (Gaffett, Baute, Lacoste, Martin) Nays: 0 Absent: 1 (Torrey)

Council members agreed "Blues on the Beach" is a public benefit and a lot of fun. A special event license is not needed.

4. Minutes: March 28, 2012

Ms. Gaffett moved to approve the minutes of March 28, 2012, seconded by Mr. Lacoste.

Ayes: 4 (Gaffett, Baute, Lacoste, Martin) Nays: 0 Absent: 1 (Torrey)

5. Correspondence: Governor Chafee re: thank your for local support; Robert Closter, Jr. re: notice of Zoning Board public hearing

No action was needed and no action was taken with regard to the correspondence.

6. Receive and act on reports of the Town Solicitor re - [the following items may be heard in closed session pursuant to Rhode Island General Laws §42-45-5(A)(2) for sessions pertaining to litigation]

It was noted there was a typographical error in the notice; the correct section of RI General Law should have been §42-~~46~~-5(a)(2).

- Dept. of Attorney General decision on Open Meeting Act complaint of T. Mooney
Discussion of the item was held in open session. Town Solicitor Merolla reported the Attorney General found no merit to the complaint that the Town Council's meeting of October 3, 2011 was improperly noticed.
- Montgomery appeal from Planning Board decision re: Cooneymus administrative subdivision
Discussion of the item was held in open session. Town Solicitor Merolla reviewed: Cooneymus Road was owned by the Lees. The public had the right to travel on the road, but the property belonged to the Lees. The Lees gave Cooneymus Road to the Town outright for free in a deed without restrictions. Now the Town owns Cooneymus Road. The process of transferring the property by deed included filing an administrative subdivision with the Planning Board. The Planning Board approved the administrative subdivision. The Lees and the Town were both listed as applicants on the paperwork. The Montgomerys have appealed to the Zoning Board of Review asking that the Planning Board's approval of the administrative subdivision be overturned. Because the attorney representing the Planning Board also represents the Zoning Board, the Town had to engage outside Counsel for the appeal. In next week's appeal hearing, Ms. Merolla will represent the Town, Planning Board attorney Don Packer will represent the Planning Board, and Karen Ellsworth will represent the Zoning Board of Review.

Ms. Merolla reported the Town has received a settlement request from Evan Leviss, attorney for Bruce and Peggy Montgomery. The settlement proposes that the town abandon a triangular portion

of Cooneymus Road which abuts Lee and Montgomery property, with the idea from the Montgomerys' attorney that the abandonment will result in the Montgomerys owning the triangle. Ms. Merolla said the law is that if the Town abandons the road, then the abutters own to the middle; the triangle would be divided between the Lees and the Montgomerys. Ms. Merolla also said that under RI law, if a Town abandons all or part of a road and damages are sustained by an abutter, then the Town is liable to pay the cost of the damages. Ms. Merolla believes no damages would be sustained by the Montgomerys under the scenario they propose, but the Lees would sustain damages because they would have to relocate their driveway. The settlement request states that in exchange for abandoning a portion of Cooneymus Road resulting in Montgomery ownership of the abandoned property, the Montgomerys will dismiss their appeal to Zoning Board of Review regarding the Planning Board's decision to grant the administrative subdivision. Also, the Montgomerys will agree not to file an action in Superior Court to pursue their claim under the OMA that the October 3, 2011 Town Council meeting was not properly noticed. (On April 4, 2012 the Attorney General found there was no violation of the OMA.) The Montgomerys have 90 days to appeal the AG's decision. They offer to give up that right. Further, the Montgomerys offer that they will not seek that Cooneymus Road, as located by Town Council on October 3, 2011, be opened to its full length and width as a public street. And last, they say they will not challenge what they claim is a de facto abandonment of Cooneymus Road. Ms. Merolla said the Town takes issue with that characterization, the Town has not abandoned the road.

Dr. Baute said he was not sympathetic to the settlement offer.

Comment from the public: Bill McCombe thanked the Council for holding the discussion in open session. He said he was shocked to hear the free, unrestricted deed from Lees to the Town being characterized as the Town Council giving up Town property. He said it does not sound like much of a settlement. He hopes the Town will take the position of protecting the Town's property.

Mr. Martin asked whether the Town's property is wider than 33' at the location of the triangle the Montgomerys want. Town Manager Dodge said the Town was deeded 33' through the Lee's property to the shore. Before the road reaches the Lee's property, land research and recorded survey locates the road from stone wall to stone wall. It varies in width and in places measures 35 or even 42 feet wide.

There was discussion of the Town's action to grant the Montgomerys' approval for a curb cut across the stone wall onto land the Montgomerys now claim has been abandoned.

The Town Council took no action on the settlement offer.

TNS v. Estate of Filippi (triangle)

- Waste Hauler B.I., LLC v. BIRM, et al

At 8:00 Ms. Gaffett moved, seconded by Dr. Baute, to enter closed session pursuant to RI General Laws §42-46-5(a)(2) for the discussion of pending litigation, specifically Town vs. Estate of Filippi and Waste Haulers vs. BIRM et al.

Ayes: 4 (Gaffett, Baute, Lacoste, Martin) Nays: 0 Absent: 1 (Torrey)

The Town Solicitor provided an update on TNS v. Estate of Filippi (the Old Harbor Triangle) and Waste Haulers, LLC v. BIRM, et al.

At 8:15, a motion to adjourn the closed session and seal the minutes was made by Mr. Lacoste and seconded by Dr. Baute.

Ayes: 4 (Gaffett, Baute, Lacoste, Martin) Nays: 0 Absent: 1 (Torrey)

The First Warden reported no motions were made during the closed session discussion.

7. Discuss long and short term lease negotiations with Deepwater Wind for Town property re: landfall of electric transmission cables - [this item may be heard in closed session pursuant to Rhode Island General Laws §42-45-5(A)(5) for discussions related to acquisition or lease of property for public purposes]

The Town Council did not enter closed session. The Town's consultant Richard Lacapra could not attend the meeting and the item was not discussed.

**8. Receive and act on Town Manager report re: TNS Police Union contract negotiations –
[this item may be heard in closed session pursuant to Rhode Island General Laws §42-45-5(A)(2)
for discussions pertaining to collective bargaining]**

The Town Council did not enter closed session and the item was not discussed.

At 8:20 Mr. Martin moved to adjourn the meeting, seconded by Mr. Lacoste.

Ayes: 4 (Gaffett, Baute, Lacoste, Martin) Nays: 0 Absent: 1 (Torrey)

Minutes approved June 20, 2012

Fiona Fitzpatrick
Town Clerk